

CHAPTER 74:02:10 FENCES CROSSING NAVIGABLE STREAMS

Section

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74:02:10:01. Definitions. Terms defined in SDCL chapter 43-17 have the same meaning when used in this chapter. In addition, the term "gate" means a section of the fence, including switchbacks and other devices, that crosses a stream, as allowed by SDCL 43-17-35, and that can be opened to allow safe passage.

Source: 18 SDR 59, effective September 29, 1991.

General Authority: SDCL 43-17-36.

Law Implemented: SDCL 43-17-36.

74:02:10:02. Landowner requirements. Persons constructing or maintaining a fence across a navigable stream shall:

(1) Provide the following information to the chief engineer:

(a) The name, address, and telephone number of the landowner proposing to construct or maintain the fence;

(b) The name, address, and telephone number of the person responsible for maintaining the fence if different than the landowner; and

(c) The location of the fence where it crosses the stream, described by its direction and distance from the nearest legal section corner, including section number, township, and range;

(2) Install and maintain a functional gate in the fence over the stream or, if allowed by a variance, immediately adjacent to the public right of way to allow passage of boats, canoes, other vessels, snowmobiles, and pedestrians; and

(3) Remove the gate or keep it open when livestock are not present, unless a variance has been granted.

Source: 18 SDR 59, effective September 29, 1991.

General Authority: SDCL 43-17-36.

Law Implemented: SDCL 43-17-35.

74:02:10:03. Gate specifications. The gate must have a minimum overhead clearance of 6 feet and a minimum opening that is 6 feet wide. The opening must be outlined with reflective or highly visible material. Fencing materials may be used to close the gap on each side of the gate between the gate and the stream banks. Reflectors, spaced at a maximum of 25 feet, or reflective or highly visible material must be attached to the fencing that connects the gate to the stream banks. The reflectors or other material must be visible both upstream and downstream simultaneously.

Source: 18 SDR 59, effective September 29, 1991.

General Authority: SDCL 43-17-36.

Law Implemented: SDCL 43-17-35.

74:02:10:04. Declaratory ruling on navigability. A request for a declaratory ruling on the navigability of a stream must be in the form of a petition submitted to the chief engineer containing the following:

(1) The name, address, and telephone number of the person or persons submitting the petition;

(2) The name and location of the stream;

(3) The requested action and reasons for the request; and

(4) A fee of \$50 for each petition.

Source: 18 SDR 59, effective September 29, 1991.

General Authority: SDCL 1-26-15.

Law Implemented: SDCL 43-17-34.

74:02:10:05. Timely consideration by board. The board shall consider the petition submitted pursuant to § 74:02:10:04 no later than its second regularly scheduled meeting after receipt of the petition.

Source: 18 SDR 59, effective September 29, 1991.

General Authority: SDCL 1-26-15.

Law Implemented: SDCL 43-17-34.

74:02:10:06. Petitioner to publish notice. The petitioner shall publish a notice of hearing describing the contents of the petition pursuant to SDCL 46-2A-4(1) to 46-2A-4(10), as applicable, and SDCL 1-26-17.

Source: 18 SDR 59, effective September 29, 1991.

General Authority: SDCL 1-26-15.

Law Implemented: SDCL 43-17-34.

74:02:10:07. Deletion of stream portions from streams listed in SDCL 43-17-38. The following portions of streams are deleted from the list of streams where gates or openings are required in fences across streams pursuant to SDCL 43-17-38:

(1) The portion of the Belle Fourche River from the Wyoming state line to the Belle Fourche Irrigation District Diversion Dam in Butte County [SDCL 43-17-38(18)];

(2) The portion of the Belle Fourche River from its intersection with Highway 79 in Butte County to its intersection with Meade County Highway 12 on the west side of section 19, township 5 north, range 10 east of the Black Hills meridian [SDCL 43-17-38(18)];

(3) The portion of the Cheyenne River from the Wyoming state line to the mouth of Hat Creek in Fall River County in the southeast quarter of section 13, township 9 south, range 4 east of the Black Hills meridian [SDCL 43-17-38(14)];

(4) The Little Minnesota River from Highway 10 to Lake Traverse in Roberts County [SDCL 43-17-38(19)];

(5) The North Fork of Whetstone River in Roberts and Grant Counties from Highway 15 near Wilmot to the Minnesota state boundary [SDCL 43-17-38(5)];

(6) The portion of the Cheyenne River from the Angostura Dam to the Fall River-Custer County line [SDCL 43-17-38(14)];

(7) The portion of the Cheyenne River from Highway 44 to the mouth of the Belle Fourche River [SDCL 43-17-38(14)];

(8) The Little Missouri River in Harding County from the Montana state boundary to the North Dakota state boundary [SDCL 43-17-38(17)]; ~~and~~

(9) The portion of the Belle Fourche River from its intersection with Meade County Highway 12 on the west side of section 19, township 5 north, range 10 east to its confluence with the Cheyenne River, section 33/34, township 6 north, range 15 east of the Black Hills Meridian [SDCL 43-17-38(18)]; and

(10) Firesteel Creek located in Davison County [SDCL 43-17-38(10)].

Source: 19 SDR 73, effective November 19, 1992; 20 SDR 53, effective October 20, 1993; 21 SDR 68, effective October 13, 1994.

General Authority: SDCL 43-17-39.

Law Implemented: SDCL 43-17-38, 43-17-39.

Declaratory Ruling:

A list of petitioners requested the Water Management Board to declare the portion of the Little Missouri River from the Montana-South Dakota state line to the North Dakota-South Dakota state line as not meeting the definition of navigable in SDCL 43-17-34. The board found that the river segment was not navigable and adopted ARSD 74:02:10:07(8) to delete the river segment because public use was not significant. South Dakota Water Management Board Declaratory Ruling dated August 31, 1994.